

AMENDED IN SENATE MARCH 24, 2003

AMENDED IN SENATE MARCH 19, 2003

SENATE BILL

No. 158

Introduced by Senator Alarcon

February 11, 2003

An act to add Chapter 4.6 (commencing with Section 1070) to Part 3 of Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 158, as amended, Alarcon. Displaced public transit employees.

Existing law provides for a system of labor standards enforcement administered by the Labor Commissioner.

This bill would establish a bidding preference for public transit service contractors and subcontractors who agree to retain, for a period of at least 180 days, certain employees who were employed to perform essentially the same services by the previous contractor or subcontractor. Contractors or subcontractors who agree to retain employees under the bill's provisions must offer employment to those employees except for reasonable and substantiated cause, as specified. This bill would provide that if a successor contractor or subcontractor determines that fewer employees are needed than under the prior contract, qualified employees shall be retained by seniority within the job classification. This bill would require the existing contractor, ~~upon request of~~ *when required by* the awarding authority, to provide employment information relating to wage rates, benefits, and job classifications of employees under the existing service contract to the awarding authority or a successor contractor, as specified.

This bill would require the awarding authority to publish specified information in any initial bid package governed by its provisions, thereby imposing a state-mandated local program.

This bill would authorize an employee fired or not retained in violation of the bill's provisions, or his or her agent, to bring an enforcement action in a court of competent jurisdiction, as specified.

This bill would require the awarding agency to terminate the contract of any contractor or subcontractor who substantially breaches an agreement made pursuant to the bill's provisions. That terminated contractor or subcontractor would be ineligible to bid or be awarded a contract with that awarding authority for 1 to 3 years.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 4.6 (commencing with Section 1070) is
2 added to Part 3 of Division 2 of the Labor Code, to read:

3

4 CHAPTER 4.6. PUBLIC TRANSIT SERVICE CONTRACTS

5

6 1070. The Legislature finds and declares all of the following:

7 (a) That when public transit agencies award contracts to
8 operate bus and rail services to a new contractor, qualified
9 employees of the prior contractor who are not reemployed by the
10 successor contractor face significant economic dislocation as a
11 result.

12 (b) That those displaced employees rely unnecessarily upon the
13 unemployment insurance system, public social services, and



1 health programs, increasing costs to these vital government
2 programs and placing a significant burden upon both the
3 government and the taxpayers.

4 (c) That it serves an important social purpose to establish
5 incentives for contractors who bid public transit services contracts
6 to retain qualified employees of the prior contractor to perform the
7 same or similar work.

8 1071. The following definitions apply throughout this
9 chapter:

10 (a) “Awarding authority” means any local government
11 agency, including any city, county, special district, transit district,
12 joint powers authority, or nonprofit corporation that awards or
13 otherwise enters into contracts for public transit services
14 performed within the State of California.

15 (b) “Bidder” means any person who submits a bid to an
16 awarding agency for a public transit service contract or
17 subcontract.

18 (c) “Contractor” means any person who enters into a public
19 transit service contract with an awarding authority.

20 (d) “Employee” means any person who works for a contractor
21 or subcontractor under a contract. “Employee” does not include
22 an executive, administrative, or professional employee exempt
23 from the payment of overtime compensation within the meaning
24 of subdivision (a) of Section 515 or any person who is not an
25 “employee” as defined under Section 2(3) of the National Labor
26 Relations Act (29 U.S.C. Sec. 152(3)).

27 (e) “Person” means any individual, proprietorship,
28 partnership, joint venture, corporation, limited liability company,
29 trust, association, or other entity that may employ individuals or
30 enter into contracts.

31 (f) “Public transit services” means the provision of passenger
32 transportation services to the general public, including paratransit
33 service.

34 (g) “Service contract” means any contract the principal
35 purpose of which is to provide public transit services through the
36 use of service employees.

37 (h) “Subcontractor” means any person who is not an employee
38 who enters into a contract with a contractor to assist the contractor
39 in performing a service contract.

1 1072. (a) A bidder shall declare as part of the bid for a service
2 contract whether or not he or she will retain the employees of the
3 prior contractor or subcontractor for a period of not less than 180
4 days.

5 (b) An awarding authority letting a service contract out to bid
6 shall give a 10 percent preference to any bidder who agrees to
7 retain the employees of the prior contractor or subcontractor
8 pursuant to subdivision (a).

9 (c) (1) Prior to letting a service contract out to bid, the
10 awarding authority ~~may request~~ *shall require* the existing service
11 contractor to provide the number of employees who are
12 performing services under the service contract and the wage rates,
13 benefits, and job classifications of those employees. The existing
14 service contractor shall provide this information within a
15 reasonable time of the request. The awarding authority shall
16 publish, as part of the initial bid package for a successor service
17 contract, the applicable wage rates, benefit levels, and job
18 classifications of employees who will perform services under the
19 service contract. If the successor service contract is awarded to a
20 new contractor, the existing contractor shall provide the names and
21 addresses of employees to the successor contractor. The duties
22 imposed by this subdivision shall be contained in all service
23 contracts.

24 (2) A successor contractor or subcontractor who agrees to
25 retain employees pursuant to subdivision (a) shall retain
26 employees who have been employed by the prior contractor or
27 subcontractors, except for reasonable and substantiated cause.
28 That cause is limited to the particular employee's performance or
29 conduct while working under the prior contract or the employee's
30 failure of any controlled substances and alcohol test, physical
31 examination, or criminal background check required by law as a
32 condition of employment. This requirement shall be stated by an
33 awarding authority in any initial bid package governed by this
34 chapter.

35 (3) The successor contractor or subcontractor shall make a
36 written offer of employment to each employee to be rehired. That
37 offer shall state the time within which the employee must accept
38 that offer, but in no case less than 10 days. Nothing in this section
39 requires the successor contractor or subcontractor to pay the same

1 wages or offer the same benefits provided by the prior contractor
2 or subcontractor.

3 (4) If, at any time, the successor contractor or subcontractor
4 determines that fewer employees are required than were required
5 under the prior contract or subcontract, he or she shall retain
6 qualified employees by seniority within the job classification. In
7 determining those employees who are qualified, the successor
8 contractor or subcontractor may require an employee to possess
9 any license that is required by law to operate the equipment that
10 the employee will operate as an employee of the successor
11 contractor or subcontractor.

12 1073. (a) An employee who was not offered employment or
13 who has been discharged in violation of this chapter, or his or her
14 agent, may bring an action against the successor contractor or
15 subcontractor in any superior court having jurisdiction over the
16 successor contractor or subcontractor. Upon finding a violation of
17 this chapter, the court shall order reinstatement to employment
18 with the successor contractor or subcontractor and award backpay,
19 including the value of benefits, for each day of violation. A
20 violation of this chapter continues for each day that the successor
21 contractor or subcontractor fails to employ the employee, within
22 the period agreed to pursuant to Section 1072.

23 (b) The court may preliminarily or permanently enjoin the
24 continued violation of this chapter.

25 (c) If the employee prevails in an action brought under this
26 chapter, the court shall award the employee reasonable attorney's
27 fees and costs as part of the costs recoverable.

28 1074. (a) Upon its own motion or upon the request of any
29 member of the public, an awarding authority shall terminate any
30 service contract made pursuant to Section 1072 that is
31 substantially breached by a contractor or subcontractor. Within 30
32 days of receipt of a request pursuant to this section, the awarding
33 authority shall hold a public hearing to decide whether to terminate
34 the service contract.

35 (b) A contractor or subcontractor terminated pursuant to
36 subdivision (a) shall be ineligible to bid on or be awarded a service
37 contract or subcontract with that awarding authority for a period
38 of not less than one year and not more than three years, to be
39 determined by the awarding authority.

1 SEC. 2. Notwithstanding Section 17610 of the Government
2 Code, if the Commission on State Mandates determines that this
3 act contains costs mandated by the state, reimbursement to local
4 agencies and school districts for those costs shall be made pursuant
5 to Part 7 (commencing with Section 17500) of Division 4 of Title
6 2 of the Government Code. If the statewide cost of the claim for
7 reimbursement does not exceed one million dollars (\$1,000,000),
8 reimbursement shall be made from the State Mandates Claims
9 Fund.

